IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 376 OF 2005

Mahammad Ibrahimsaheb Shaikh. ... Appellant.
Versus.
Wadhaman Sales Corporation. ... Respondents.

Shri P.R.Arjunwadkar for the Appellant.

Shri Surel Shah for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 3rd May, 2005.

P.C.:

1. Heard the learned Advocates appearing for the parties. The trial Court has passed a decree for specific performance against the Appellant and the same has been confirmed by the Appellate Court.

2. Shri Arjunwadkar submitted that the suit plot belongs to the Agricultural Produce Market Committee and the said Committee has refused to grant permission to sell the suit plot. He submitted that there is a gross delay in filing the suit. Thirdly he submitted that the real nature of the transaction was loan transaction and not an agreement for sale.

3. In so far as the first contention is concerned, no statutory bar for effecting sale in favour of the Respondent is shown to me. If the contract between the

Market Committee and the Appellant prohibits transfer without permission of the Market Committee, consequences of breach of contract will follow. In the absence of any statutory bar, the Appellant after solemnly agreeing to sell the suit plot cannot raise a contention that he was not competent to transfer the suit plot.

4. So far as the aspect of delay is concerned, both the Courts have considered the said aspect. The Courts below have held that the Respondent was ready and willing to perform his part of the contract. The Appellate Court has recorded a finding that entire consideration was received by the Appellant. After considering all the relevant factors, the Courts below have exercised discretion under section 20 of the Specific Relief Act, 1963 in favour of the Respondent. No interference can be made with the exercise of the discretion in this Appeal under section 100 of the Code.

5. On consideration of evidence on record the Courts have found that the real nature of the transaction was agreement for sale. There is no perversity in the said findings.

6. At this stage Shri Arjunwadkar submitted that the suit is barred by limitation. It appears that the submission on the basis of the bar of limitation is not made in the Appellate Court and no point for

determination is framed by the Appellate Court on this aspect. Shri Adjunwadkar pointed out that point is raised in the Memorandum of Appeal. However, from the judgment of the Appellate Court it is not reflected that the said point was agitated before the Appellate Court. It is not the case of the Appellant that the said point was urged before the Appellate Court and was not decided.

7. At this stage Shri Adjunwadkar submitted that the issue of hardship is not considered by the Courts below. From the perusal of the Judgment of the Appellate Court, it appears that submission based on hardship to the Appellant is not made before the Appellate Court. Hence the same cannot be considered for the first time in the Second Appeal.

8. In view of the concurrent findings of fact no substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.